



STATE OF CALIFORNIA

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September 23, 2010

(via email)

Dear Interested Party:

This is a follow-up letter to our meeting in Culver City in June 2010 regarding the implementation of the California Film and Television Tax Credit. Since that time, we have been working with the Franchise Tax Board (FTB) to obtain answers to questions about when, and to whom, credits may be assigned under Revenue and Taxation Code (RTC) section 23685, subdivision (c).

RTC section 6902.5, subdivision (b)(2) provides that an "affiliate," which has been assigned a portion of an eligible taxpayer's credit amount, may make an irrevocable election to apply the assigned portion of the credit amount against qualified sales and use taxes imposed on the affiliate. However, RTC section 23685, subdivision (c)(1) governs the actual assignment of credit amounts to affiliates and provides that:

Notwithstanding subdivision (i) of Section 23036, relating to credits attributable to a passthrough business entity, in the case where the credit allowed by this section exceeds the taxpayer's tax liability computed under this part, a qualified taxpayer may elect to assign any portion of the credit allowed under this section to one or more affiliated corporations for each taxable year in which the credit is allowed. For purposes of this subdivision, "affiliated corporation" has the meaning provided in subdivision (b) of Section 25110, as that section was amended by Chapter 881 of the Statutes of 1993, as of the last day of the taxable year in which the credit is allowed, except that "100 percent" is substituted for "more than 50 percent" wherever it appears in the section, and "voting common stock" is substituted for "voting stock" wherever it appears in the section.

We asked FTB staff for guidance regarding when a qualified taxpayer may actually assign a credit amount to an affiliate. We also asked FTB staff to clarify the statutory definition of affiliate under RTC section 23685.

The FTB has informed us that the election to assign a credit amount and the actual assignment of the credit amount are two distinct events. A qualified taxpayer may elect to assign a credit amount at any time after the qualified taxpayer receives the credit certificate issued by the California Film Commission. However, under the provisions of RTC section 23685, subdivision (c)(1), a credit amount may not actually be assigned until it is certain that there is some portion of the credit in excess of the assignor's tax liability. Accordingly, the first time a credit amount can actually be assigned is when a subsequent liability is assessed against the assignor, i.e., when the

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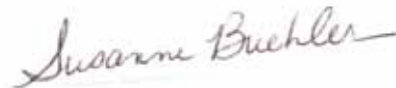
assignor's franchise or income tax return is filed, or the tax liability is assessed in some other manner. Furthermore, we have concluded that an affiliate cannot apply assigned credit amounts against qualified sales and use tax imposed on the affiliate before an actual assignment of the credit amounts is made under RTC section 23685, subdivision (c)(1).

In addition, the FTB has informed us that a qualified taxpayer may elect to assign a credit amount to the following entities, which will all qualify as "affiliated corporations" within the meaning of RTC section 23685, subdivision (c)(1): (1) a corporation that owns directly or indirectly 100 percent of the assignor's voting common stock, (2) a corporation in which the assignor owns directly or indirectly 100 percent of the voting stock, (3) a corporation that is wholly owned by a corporation or individual that owns 100 percent of the voting stock of the assignor, or (4) a "stapled entity" as defined in RTC section 25105. Furthermore, the FTB has clarified that a qualified taxpayer that is an LLC can have an affiliated corporation as defined in RTC section 23685, subdivision (c)(1), provided the LLC is being taxed as a corporation rather than as a partnership under California law.

Please note that the start date of the refund period specified in RTC section 6902.5, subdivision (d)(1), is not affected by the assignment of credit amounts. Pursuant to RTC section 6902.5, subdivision (d)(1), the start of the refund period is based on when preproduction begins.

I hope this information is helpful. If you have further questions about claiming the film credit against sales and use taxes, please contact Ms. Lynn Whitaker at (916) 324-8483 or by email at [Lynn.Whitaker@boe.ca.gov](mailto:Lynn.Whitaker@boe.ca.gov), or Mr. Bradley Heller at (916) 323-3091 or by email at [Bradley.Heller@boe.ca.gov](mailto:Bradley.Heller@boe.ca.gov).

Sincerely,



Susanne Buehler, Acting Chief  
Tax Policy Division  
Sales and Use Tax Department

SB:llw

cc: (via email)  
Ms. Amy Lemisch, California Film Commission  
Ms. Kristen Magers, Franchise Tax Board  
Mr. Randy Ferris  
Mr. Bradley Heller  
Mr. Kevin Hanks  
Mr. Steven Sisti  
Mr. Geoffrey Lyle  
Ms. Leila Hellmuth  
Ms. Lynn Whitaker